D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 906/1995

Date : 02.11.2004

HON'BLE MR. B. PRASAD, J.
HON'BLE MR. DALIP SINGH, J.

Mr. H.S. Sidhu for the appellant.
Mr. O.P. Boob, Dy. G.A.

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Heard.

Learned Single Judge had dismissed the writ petition in limine. The order under challenge is not an order which can be said to be a reasoned order. We have heard the learned counsel for the parties on merits of the case because no guidance was available from the order of the learned Single Judge.

Learned counsel for the appellant has placed before us a decision of this Court in the matter of Jarnel Singh Vs State of Rajasthan reported in RLW 1992(1) Page 362 whereby, it has been held by this Court that opening, closing, varying and shifting of outlet is directly relatable to the purpose of the Act and is therefore, governed by Rule 11(3) of Irrigation and Drainage Rules, 1955. Learned counsel for the State refuted this claim of the learned counsel for the appellant stating that the order is not governed under Rule 11(3) of the Act. On being asked as to under which provision of law, the powers were exercised by the Superintending Engineer or the Executive Engineer, learned counsel for the State has not been able to show any enabling provision to exercise powers having the

sanction of law. That being the position, in view of the Division Bench decision of this Court, we are constrained to observe that the powers could only be exercised under Rule 11(3) of the Act. The powers were to be exercised by District Irrigation Officer. In the instant case, we find that the powers were exercised by Superintending Engineer and subsequently, enforced by the Executive Engineer. This is also against the judgment delivered by this Court in the case of Jarnail Singh Vs. Superintending Engineer & Anr. Reported in RLW 2001(4) Raj. 83. In this view of the matter, we allow this appeal and set aside the order of the learned Single Judge, so also the orders of Superintending Engineer and the Executive Engineer (Ex.1). The matter is remanded back to the District Irrigation Officer for deciding afresh in accordance with law.

(DALIP SINGH), J. **(B. PRASAD), J.**

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